

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHRISTOPHER META, et al.,)	CASE NO. 4:14 CV 832
)	
Plaintiffs,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
TARGET CORPORATION, et al.,)	
)	
)	<u>ORDER</u>
Defendants.)	
)	

This matter is before the Court on Plaintiff's Motion for a Bond to Secure Payment of Costs and Attorneys' Fees on Appeal. (ECF #184). Plaintiff's motion is brought under Fed. R. App. P. 7. Objector, Sheila Ference filed an Opposition to the motion. (ECF #185). Ms. Ference and Mr. Neumann objected to the class settlement reached in this case. Those objections were overruled by this Court and an Order and Final Judgment approving the settlement was entered on August 7, 2018. (ECF#179). Ms. Ference and Mr. Neumann then filed an appeal which operates to halt any distribution of settlement funds to class members, while the appeal is pending.

Plaintiff filed a Motion requiring Ms. Ference and Mr. Neumann to each post \$40,000.00 towards a bond to ensure payment of costs, including delay costs, associated with

the appeal. Mr. Neumann has not objected to the request. Ms. Ference, however, contends that no bond is authorized under the circumstances of this case. Appellate Rule 7 gives the Court discretion to impose a bond or other security in any form and amount necessary to ensure payment of costs on appeal. Fed. R. App. P. 7; *see also*, *Gemelas v. Dannon Co.*, No. 1:08 CV 236, 2010 WL 3703811, at *1 (N.D. Ohio Aug. 31, 2010). In deciding whether to impose a bond, the Court considers the merits of the appeal, the appellant's ability to pay a bond; the risk that the appellant would not pay costs if the appeal is unsuccessful, and any bad faith or vexatious conduct on the part of the appellant. *See, e.g., Tri-Star Pictures, Inc. v. Unger*, 32 F. Supp. 2d 144, 147-50 (S.D.N.Y. 1999).

Ms. Ference's appeal is meritless, frivolous, and objectively unreasonable. She did not, and cannot demonstrate that the settlement reached by the parties was anything other than fair, adequate, and reasonable. Ms. Ference has offered no evidence suggesting that she is unable to pay the requested bond, or that the bond constitutes a barrier to her ability to pursue an appeal. Where an objector has failed to present any such evidence, her ability to manage the bond is presumed. *See, In re Initial Pub. Offering Securities Litigation*, 728 F.Supp.2d 289, 293 (S.D.N.Y. 2010). Further, there is evidence that both of the appellants are serial objectors. When an appeal is taken by a serial objector without substantial grounds to challenge the validity of the underlying settlement, public policy weighs in favor of imposing a bond. *Gemelas*, 2010 WL 3703811, *2; *accord Allapattah Serv., Inc. v. Exxon Corp.*, No. 91-0986 CV 2006 WL 1132371 (S.D. Fla. Apr. 7, 2006). Finally, the delay in executing the settlement that will be caused by the appeal will significantly impede the Plaintiff and other class member's relief.

The Court finds that under the specific circumstances of this case, considering the evidence presented at the settlement hearing, the lack of support provided by the objectors, and the history of frivolous appeals filed by these two appellant objectors and related individuals, a bond is warranted to protect the rights of the parties. Plaintiff has conservatively estimated that he expects to incur up to \$80,000 in appellate costs, administrative costs caused by the delay in administering the settlement, and attorneys fees incurred in defense of a frivolous appeal. As such, a bond amount of \$80,000.00 to be divided equally between the appellants, Ms. Ference and Mr. Neumann, is appropriate.

Plaintiff's Motion for a Bond to Secure Payment of Costs and Attorney' Fees and Appeal (ECF #184) is hereby GRANTED. The named appellants, Ms. Ference and Mr. Neumann shall each contribute \$40,000.00 toward a total bond of \$80,000.00 to ensure payment of costs on appeal. IT IS SO ORDERED.


Donald C. Nugent
United States District Judge

Date:

September 24, 2018